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Court of Appeal Cause No. 58809-5-I

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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SWANSON, JAMES TAYLOR, GREGORY TWENTY,

ORIGINAL

KRISTI WILSON AND SHEREE WRIGHT-COX,
Petitioners,

v.

CITY OF REDMOND, a political subdivision
of the State of Washington,
Respondent.

PETITIONERS' SUPPLEMENTAL BRIEF

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2 **Cases**

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7 *Perez v. Mid-Century Ins. Co.*, 85 Wn. App. 760, 934 P.2d 731 (1997). 7

8 **Statutes**

9 RCW 41.56.450 1, 2, 6

10 RCW 49.46 3, 4, 5

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12 RCW 49.48 3, 4, 5

13 RCW 49.48.030 3

14 RCW 49.52 1, 3, 4, 5, 6

15 RCW 49.52.070 3

16 **Regulations**

17 WAC 296-128-035..... 1, 3, 5, 6

1 **I. ASSIGNMENTS OF ERROR**

2 Whether payments required by an interest arbitration award
3 become “due” on the date of the award for the purpose of applying the
4 timely payment requirements of WAC 296-128-035, which is
5 enforceable through the Wage Rebate Act, RCW 49.52?

6 Assignment of Error: The Court of Appeals erred in concluding
7 that payments due by virtue of a “final and binding” interest arbitration
8 award, issued in accordance with RCW 41.56.450, do not become due
9 on the date of the award. The Court of Appeals also erred in concluding
10 that interest arbitration awards only become due when the prevailing
11 party brings a separate enforcement action or bargains for a specific due
12 date.

13 **II. STATEMENT OF THE CASE**

14 **A. Factual Background.**

15 Plaintiff-Petitioners were employed by the Defendant-
16 Respondent City of Redmond (“City”) as police officers. (CP 383). In
17 this capacity, the officers were represented for purposes of collective
18 bargaining by the Redmond Police Association (“RPA”). (CP 383).

19 The RPA and the City participated in negotiations for a January
20 1, 2002 through December 31, 2004 collective bargaining agreement
21 between the RPA and the City. (CP 6). The collective bargaining
22 agreement was to be a successor to a January 1, 2001 through
23 December 31, 2001 collective bargaining agreement between the RPA

1 and the City and was to set forth the wages, hours, and other terms and
2 conditions of employment for the officers. (CP 384).

3 The City and the RPA were unable to reach agreement on the
4 terms of a January 1, 2002 through December 31, 2004 collective
5 bargaining agreement. (CP 384). The dispute over the unresolved issues
6 between the RPA and the City was submitted to "interest arbitration" in
7 accordance with RCW 41.56.450. (CP 384).

8 On March 3, 2004, arbitrator Jane Wilkinson issued an award
9 providing for, among other things: (a) a wage increase of 3.51%
10 retroactive to January 1, 2002; (b) a wage increase equal to 100% of the
11 percentage change in the Consumer Price Index ("CPI") retroactive to
12 January 1, 2003; and (c) a wage increase equal to 100% of the
13 percentage change in the CPI retroactive to January 1, 2004. (CP 446-
14 487). The parties received the award on March 5, 2004. (CP 384).

15 Subsequent to receiving Arbitrator Wilkinson's award, attorneys
16 for the City and the RPA exchanged a series of e-mails during the
17 months of March and April, 2004. (CP 387). The substance of these
18 emails addressed incorporating the arbitration award into the language
19 of the collective bargaining agreement and implementing the
20 arbitrator's award. (CP 387). In this regard, the RPA's position
21 throughout the e-mail exchange was that payment of the retroactive
22 wage award should occur as quickly as possible. (CP 387).

23

1 Despite the RPA's requests for payment of the retroactive wage
2 payment, five intervening paydays (approximately two months) passed
3 between the receipt of the arbitrator's award and the payment of wages
4 required by that award. (CP 387). On May 25, 2004, the City paid RPA
5 members for the retroactive wages owed under the March 3 arbitration
6 award. (CP 387). The City's delay in paying the retroactive wage
7 increase resulted in this litigation.

8 **B. Procedural History.**

9 On December 29, 2004, the officers filed a complaint based on
10 the delayed payment of the retroactive wage increase. The complaint
11 sought damages arising out of violations of Washington's Minimum
12 Wage Act (MWA), RCW Ch. 49.46, Wage Payment Act (WPA), RCW
13 Ch. 49.48, and Wage Rebate Act (WRA), RCW Ch. 49.52, as
14 interpreted by the Department of Labor and Industries in WAC 296-
15 128-035. The officers' complaint sought damages, costs, attorneys'
16 fees, and prejudgment interest in accordance with the civil enforcement
17 provisions of the MWA, RCW 49.46.090, the WPA, RCW 49.48.030,
18 and the WRA, RCW 49.52.070. (CP 1-9).

19 On July 27, 2005, the City moved for summary judgment on the
20 officers' claims and, after supplemental briefing by the parties, the
21 court entered an order dated February 13, 2006, granting the City's
22 motion in part, but denying the City's motion as a matter of law as to
23

1 the claims arising under the WPA. The trial court dismissed the
2 officers' claims arising under the MWA and the WRA, with prejudice.

3 On June 19, 2006, the officers' second claim for relief was
4 submitted to the trial court on stipulated facts and exhibits. Having
5 previously dismissed the first and third claims for relief, the trial court
6 limited its findings of fact and conclusions of law to a determination of
7 the City's liability for interest and attorneys' fees under the WPA. (CP
8 593-596). On August 7, 2006, the trial court entered judgment in the
9 City's favor and dismissed the officers' second claim for relief with
10 prejudice. (CP 593-596). In particular, the trial court found that the
11 interest arbitration award ordering retroactive wage payments "did not
12 create an immediate obligation to pay money to the employees." (CP
13 595). The trial court held that such an obligation "had to be created
14 through entry of a judgment which was never done or a collective
15 bargaining agreement which was done in June 2004, after the wages
16 had been paid." (CP 595).

17 On September 1, 2006, the officers filed a Notice of Appeal of
18 the trial court's summary judgment order. On August 27, 2007, the
19 Court of Appeals affirmed the trial court's summary dismissal of the
20 officers' statutory wage and hour claims. A-11. The Court of Appeals
21 affirmed the dismissal because "the precise date when the retroactive
22 payments were 'due' was not fixed by statute, judgment, or contract."
23 A-2. In so holding, the Court of Appeals found in pertinent part that the

1 date of the arbitration award was not a due date for the retroactive wage
2 payments. A-8

3 The officers sought review of that decision in this Court. On June
4 4, 2008, the officers' Petition For Review was granted.

5 III. ARGUMENT

6 As a result of this Court's recent decision in *Champagne v.*
7 *Thurston County*, 163 Wn.2d. 69, 17 P.3d 936 (2008), it is now clear
8 that Washington's Wage Rebate Act (WRA), RCW 49.52 provides a
9 remedy where wages are untimely paid in willful violation of WAC
10 296-128-035.¹ Here, Arbitrator Wilkinson's March 3, 2004 arbitration
11 award required the City to make a retroactive wage payment to the
12 officers. (CP 446-487). The City willfully delayed payment of the
13 retroactive wages until May 25, 2004. (CP 387). Five intervening
14 paydays passed between the date of the award and the payment of the
15 wages required by that award. (CP 387). That delay is in violation of
16 the requirement that employers pay "all wages" at monthly intervals.
17 WAC 296-128-035. Had the trial court not erred in dismissing the
18 officers' claims under the WRA, the officers could have presented

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¹ In *Champagne*, this Court also decided that "delayed payment" does not
provide a cause of action under the MWA, RCW 49.46, where all wages have been
paid, and does not provide a cause of action under the WPA, RCW 49.48 for current
employees. In light of this holding, officers' focus in this case is limited to the
WRA.

1 evidence of the City's willful conduct sufficient to support an award of
2 double damages, and, they will do so if this case is remanded. Thus, the
3 wages at issue were not paid in accordance with the requirements of
4 WAC 296-128-035, and, the officers are entitled to recover monetary
5 damages occasioned by the delay under the WRA.

6 However, the Court of Appeals held that the officers were not
7 entitled to such a remedy under the WRA because they did not bring a
8 separate action to enforce Arbitrator Wilkinson's interest arbitration
9 award or bargain for and obtain language requiring the retroactive
10 payments to be paid by a specific date. As discussed in the officers'
11 Petition For Review, this holding ignores the express language of RCW
12 41.56.450 and the legislative intent behind it.

13 In addition, as detailed in the' Petition For Review, the decision
14 of the Court of Appeals allows an employer to delay the payment of
15 wages awarded in an interest arbitration without the adversely impacted
16 employees having any remedy under the WRA. Such a result is
17 inconsistent with Washington's "long and proud history of being a
18 pioneer in the protection of employee rights." *International Ass'n of*
19 *Fire Fighters v. City of Everett*, 146 Wn.2d 29, 35, 42 P.3d 1265
20 (2002).

21 Finally, as described in the officers' Petition For Review, the
22 Court of Appeals' decision is inconsistent with Washington's "strong
23 public policy... favoring arbitration of disputes." *Perez v. Mid-Century*

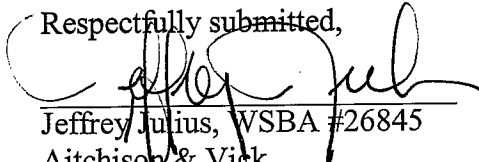
1 *Ins. Co.*, 85 Wn. App. 760, 765, 934 P.2d 731 (1997) (citing *Munsey v.*
2 *Walla Walla College*, 80 Wn. App. 92, 94, 906 P.2d 988 (1995)). As a
3 result of this Court's decision in *Champagne* and the errors discussed in
4 the Petition For Review, this Court must reverse the decision of the
5 Court of Appeals.

6 IV. CONCLUSION

7 This Court should reverse the decision of the Court of Appeals
8 and remand this case to the trial court to permit Petitioners to proceed
9 with their statutory wage claim against the City.

10 DATED this 20th day of July, 2008.

11 Respectfully submitted,

12 
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23

Case No.

**SUPREME COURT
OF THE STATE OF WASHINGTON**


NICK ALMQUIST, JOHN ATKINSON,) **Court of Appeals No. 58809-5-I**
JASON BAIRD, et al.)
) **King County No. 04-2-40865-2 SEA**
Petitioners,)
)
v.) **CERTIFICATE OF SERVICE**
)
CITY OF REDMOND, a political)
subdivision of the State of Washington,)
)
Respondent.)

I hereby declare under penalty of perjury according to the laws of the State of Washington that on this date I have caused a true and correct copy of the Supplemental Brief and Certificate of Service to be served via ABC Legal Messenger on the following:

Greg Rubstello
Ogden Murphy Wallace, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, WA 98101-1686

I have also caused the original of the above to be filed with the Court of Appeals of the State of Washington Division One via ABC Legal Messenger.

Executed in Seattle, Washington this 2nd day of July, 2008.


Linda Khampradith

CERTIFICATE OF SERVICE - 1

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ORIGINAL